

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM T. ROGERS)	
Claimant)	
VS.)	
)	
BICHELMEYER MEATS)	Docket No. 262,253
Respondent)	
)	
and)	
)	
HARTFORD INSURANCE)	
Insurance Carrier)	

ORDER

Claimant appealed the December 5, 2002 Order and the December 12, 2002 Award entered by Administrative Law Judge (ALJ) Julie A.N. Sample. The Appeals Board (Board) heard oral argument in the two consolidated appeals on April 18, 2003. Stacy Parkinson participated in this matter as a Board Member Pro Tem.

APPEARANCES

Steven C. Alberg of Olathe, Kansas, appeared for claimant. Heather Nye of Kansas City, Missouri, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board considered the record and adopts the stipulations listed in the Award. In addition, the Board considered the transcript of the December 2, 2002, hearing on claimant's Motion to Extend Terminal Date and, by agreement of the parties during oral argument to the Board, the September 9, 2002 letter by Heather Nye to Steven C. Alberg

which was attached to Claimant's Memorandum In Support of Application for Review by the Workers' Compensation Appeals Board. The Board did not consider the letter dated October 21, 2002 to the Hartford by Prem Parmar, M.D., which was also attached to Claimant's Memorandum Brief to the Board.

ISSUES

The nature and extent of claimant's disability is the only issue in the appeal from Judge Sample's Award. But that Award was decided without the opinion of claimant's treating physician, orthopedic surgeon, Prem Parmar, M.D., because Judge Sample denied claimant's motion for an extension of his terminal date in order to take the deposition of Dr. Parmar. Claimant contends that was error and requests the Board remand this matter to the ALJ with directions that claimant's terminal date be extended for this purpose. Claimant also requests that the assessment of costs against claimant for the December 2, 2002 hearing, likewise, be reversed.

Conversely, respondent requests that the ALJ's Order and Award be affirmed in all respects.

FINDINGS OF FACT

1. Claimant seeks workers compensation benefits for a December 22, 2000 injury. Respondent acknowledges the compensability of this claim. The only dispute concerns the percentage of claimant's permanent impairment of function. Claimant's entitlement to an unauthorized medical allowance and future medical treatment were also issues before the ALJ. Both were awarded by the ALJ and no review has been sought of those orders.

2. Claimant's authorized treating physician was orthopedic surgeon, Prem Parmar, M.D. According to claimant's brief, Dr. Parmar released claimant on or about April 25, 2001, but Dr. Parmar said he would wait one year before issuing a rating report. Claimant's counsel made a request to respondent's counsel at the pretrial settlement conference for a rating report from Dr. Parmar. That request was subsequently renewed, including by a letter after the October 10, 2002 rating exam and about a week before the date scheduled for Dr. Parmar's deposition.

3. A pre-hearing settlement conference was held before Judge Sample on July 18, 2002, and a regular hearing was held on September 12, 2002. Terminal dates were established as October 21, 2002 for claimant and December 2, 2002 for respondent.

4. By letter of September 9, 2002, respondent's counsel informed claimant's

counsel that respondent had scheduled a rating examination with Dr. Parmar for October 10, 2002.

5. On September 25, 2002, respondent's counsel issued a Notice to Take Deposition of Dr. Parmar at 7:00 a.m. on October 24, 2002.

6. Dr. Parmar examined claimant on October 10, 2002, as scheduled, but did not issue a report until October 21, 2002. That report was furnished to respondent's counsel and thereafter to claimant's counsel on October 23, 2002.

7. Thereafter, on October 23, 2002, conversations between respondent's counsel and claimant's counsel ensued. Claimant's counsel stated that he wanted to proceed with Dr. Parmar's deposition as scheduled but ultimately was informed by respondent's counsel that the deposition was cancelled.

8. That same day, October 23, 2002, claimant's counsel wrote the ALJ, requesting an extension of claimant's terminal date to take the deposition of Dr. Parmar. Respondent objected to that request. Claimant then filed a motion to extend his terminal date in order to take the deposition of Dr. Parmar. That motion was heard by Judge Sample on December 2, 2002. In an Order dated December 5, 2002, claimant's motion was denied. A final Award was entered by the ALJ on December 12, 2002. Claimant timely appealed both orders.

CONCLUSIONS OF LAW

The Board will first address the issue concerning claimant's request for an extension of his terminal date in order to take the deposition of Dr. Parmar. K.S.A. 44-515 provides in part:

(a) After an employee sustains an injury, the employee shall, upon request of the employer, submit to an examination at any reasonable time and place by any one or more reputable health care providers, selected by the employer. . . . Any employee so submitting to an examination or such employee's authorized representative shall upon request be entitled to receive and shall have delivered to such employee a copy of the health care provider's report of such examination within 15 days after such examination, which report shall be identical to the report submitted to the employer.

(e) Any health care provider's opinion, whether the provider is a treating health care provider or is an examining health care provider, regarding a claimant's need for medical treatment, inability to work, prognosis, diagnosis

and disability rating shall be considered and given appropriate weight by the trier of fact together with consideration of all other evidence.

But K.S.A. 44-519 provides:

Certificate of health care provider as evidence. Except in preliminary hearings conducted under K.S.A. 44-534a and amendments thereto, no report of any examination of any employee by a health care provider, as provided for in the workers compensation act and no certificate issued or given by the health care provider making such examination, shall be competent evidence in any proceeding for the determining or collection of compensation unless supported by the testimony of such health care provider, if this testimony is admissible, and shall not be competent evidence in any case where testimony of such health care provider is not admissible.

K.S.A. 44-523 provides:

(a) The director, administrative law judge or board shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality.

(b) Whenever a party files an application for hearing pursuant to K.S.A. 44-534 and amendments thereto, the matter shall be assigned to an administrative law judge for hearing and the administrative law judge shall set a terminal date to require the claimant to submit all evidence in support of the claimant's claim no later than 30 days after the first full hearing before the administrative law judge and to require the respondent to submit all evidence in support of the respondent's position no later than 30 days thereafter. An extension of the foregoing time limits shall be granted if all parties agree. An extension of the foregoing time limits may also be granted:

(1) If the employee is being paid temporary or permanent total disability compensation;

(2) for medical examination of the claimant if the party requesting the extension explains in writing to the administrative law judge facts showing that the party made a diligent effort but was unable to have a medical examination conducted prior to the submission of the case by the claimant but then only if the examination appointment was set and

notice of the appointment sent prior to submission by the claimant; or

(3) on application for good cause shown.

The Board concludes that good cause has been shown for the extension of claimant's terminal date. Despite the fact that claimant made the decision to proceed to a regular hearing without a rating from Dr. Parmar, once respondent made the decision to schedule a rating examination of claimant with Dr. Parmar claimant was entitled to a rating report within 15 days of that examination. To then deny claimant the opportunity to depose the doctor and place his rating opinion into evidence renders meaningless the requirement that a report be furnished.

Therefore, the December 5, 2002 Order denying claimant's request for an extension of his terminal date should be reversed and this matter is remanded with directions to grant claimant an extension of his terminal date in order to take the deposition of Dr. Parmar. This finding and conclusion likewise requires the reversal and remand of the December 12, 2002 Award. A new Award shall be entered by the ALJ once the record is complete. The party or parties that will be responsible for the costs of the December 2, 2002 hearing will be determined at the time of the final Award.

WHEREFORE, the Appeals Board reverses the December 5, 2002 Order and the December 12, 2002 Award and remands this matter to the Administrative Law Judge for further proceedings and orders consistent herewith.

IT IS SO ORDERED.

Dated this _____ day of April 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven C. Alberg, Attorney for Claimant
Heather Nye, Attorney for Respondent
Julie A.N. Sample, Administrative Law Judge
Director, Division of Workers Compensation